

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/17)

Fiscal Year 2019/20	Business Unit 7350	Department Department of Industrial Relations	Priority No. 1
Budget Request Name 7350-101-BCP-2019-GB		Program 6090 – DIVISION OF WORKERS' COMPENSATION 9900100 – DIVISION OF ADMINISTRATION	Subprogram

Budget Request Description
 Increased Support for SIBTF Program

Budget Request Summary

The Department of Industrial Relations requests 30.0 positions and \$4.8 million in 2019-20, 30.0 positions and \$4.4 million in 2020-21 and 2021-22, 23.0 positions and \$3.4 million in 2022-23, with 14.0 positions and \$2.0 million in 2023-24 and ongoing from the Workers' Compensation Administration Revolving Fund to: 1) reduce caseloads per claims examiner to a manageable level; and 2) provide sufficient claims examiners and attorneys to perform due diligence investigations and reduce the State's long term liability from Subsequent Injury Benefit Trust Fund (SIBTF) claims. This proposal also includes Trailer Bill Language to align SIBTF statutes with other workers' compensation statutes.

Requires Legislation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Labor Code sections 4751 - 4756	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Project Approval Document: Approval Date:

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Jeffrey Pantoja	Date 12/26/2018	Reviewed by Courtney Monte	Date 12/26/2018
Department Director Victoria Hassid, Chief Deputy	Date 12/26/2018	Agency Secretary David M. Lanier	Date 01/02/2019

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

PPBA	Original Signed By Danielle Brandon	Date submitted to the Legislature
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BCP Fiscal Detail Sheet

BCP Title: Increased Support for SIBTF Program

BR Name: 7350-101-BCP-2019-GB

Budget Request Summary

	FY19					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Personal Services						
Positions - Permanent	0.0	30.0	30.0	30.0	23.0	14.0
Total Positions	0.0	30.0	30.0	30.0	23.0	14.0
Salaries and Wages						
Earnings - Permanent	0	2,246	2,246	2,246	1,715	1,032
Total Salaries and Wages	\$0	\$2,246	\$2,246	\$2,246	\$1,715	\$1,032
Total Staff Benefits	0	1,287	1,287	1,287	983	592
Total Personal Services	\$0	\$3,533	\$3,533	\$3,533	\$2,698	\$1,624
Operating Expenses and Equipment						
5301 - General Expense	0	47	47	47	35	22
5302 - Printing	0	15	15	15	12	8
5304 - Communications	0	54	33	33	26	16
5306 - Postage	0	42	42	42	32	20
5320 - Travel: In-State	0	60	60	60	46	28
5322 - Training	0	9	9	9	7	5
5324 - Facilities Operation	0	423	423	423	324	197
5344 - Consolidated Data Centers	0	121	121	121	93	56
5346 - Information Technology	0	229	130	130	100	61
5368 - Non-Capital Asset Purchases - Equipment	0	257	2	2	2	1
Total Operating Expenses and Equipment	\$0	\$1,257	\$882	\$882	\$677	\$414
Total Budget Request	\$0	\$4,790	\$4,415	\$4,415	\$3,375	\$2,038

Fund Summary

Fund Source - State Operations						
0223 - Workers Compensation Administration	0	4,790	4,415	4,415	3,375	2,038
Total State Operations Expenditures	\$0	\$4,790	\$4,415	\$4,415	\$3,375	\$2,038
Total All Funds	\$0	\$4,790	\$4,415	\$4,415	\$3,375	\$2,038

Program Summary

Program Funding						
6090 - Division of Workers' Compensation	0	4,790	4,415	4,415	3,375	2,038
9900100 - Administration	0	1,731	1,606	1,606	1,258	804
9900200 - Administration - Distributed	0	-1,731	-1,606	-1,606	-1,258	-804
Total All Programs	\$0	\$4,790	\$4,415	\$4,415	\$3,375	\$2,038

Personal Services Details

Positions	Salary Information			<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
	Min	Mid	Max						
1282 - Legal Secty (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	1.0
5278 - Mgmt Svcs Techn (Eff. 07-01-2019)				0.0	1.0	1.0	1.0	1.0	1.0
5778 - Atty (Eff. 07-01-2019)				0.0	8.0	8.0	8.0	6.0	4.0
9210 - Workers' Comp Consultant (Eff. 07-01-				0.0	15.0	15.0	15.0	11.0	6.0
9212 - Supvng Workers' Comp Consultant (Eff. 07-				0.0	2.0	2.0	2.0	2.0	1.0
9491 - Workers' Comp Asst (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	1.0	1.0
Total Positions				0.0	30.0	30.0	30.0	23.0	14.0
Salaries and Wages	CY	BY	BY+1	BY+2	BY+3	BY+4			
1282 - Legal Secty (Eff. 07-01-2019)	0	97	97	97	97	48			
5278 - Mgmt Svcs Techn (Eff. 07-01-2019)	0	42	42	42	42	42			
5778 - Atty (Eff. 07-01-2019)	0	737	737	737	553	368			
9210 - Workers' Comp Consultant (Eff. 07-01-	0	1,112	1,112	1,112	815	445			
9212 - Supvng Workers' Comp Consultant (Eff. 07-	0	158	158	158	158	79			
9491 - Workers' Comp Asst (Eff. 07-01-2019)	0	100	100	100	50	50			
Total Salaries and Wages	\$0	\$2,246	\$2,246	\$2,246	\$1,715	\$1,032			
Staff Benefits									
5150350 - Health Insurance	0	296	296	296	226	136			
5150600 - Retirement - General	0	660	660	660	504	304			
5150900 - Staff Benefits - Other	0	331	331	331	253	152			
Total Staff Benefits	\$0	\$1,287	\$1,287	\$1,287	\$983	\$592			
Total Personal Services	\$0	\$3,533	\$3,533	\$3,533	\$2,698	\$1,624			

Analysis of Problem

A. Budget Request Summary

The Department of Industrial Relations requests 30.0 positions and \$4.8 million in 2019-20, 30.0 positions and \$4.4 million in 2020-21 and 2021-22, 23.0 positions and \$3.4 million in 2022-23, with 14.0 positions and \$2.0 million in 2023-24 and ongoing from the Workers' Compensation Administration Revolving Fund to: 1) reduce caseload per claims examiner to a manageable level; and 2) provide sufficient claims examiners and attorneys to perform due diligence investigations and reduce the State's long term liability from Subsequent Injury Benefit Trust Fund (SIBTF) claims. This proposal also includes Trailer Bill Language to align SIBTF statutes with other workers' compensation statutes.

B. Background/History

Established in 1945, the purpose of the SIBTF program is to encourage employment of workers with disabilities by relieving employers of liability for the greater levels of permanent disability that may result if an already-disabled worker later suffers an industrial injury.

Labor Code section 4751 provides that if an employee who is already partially disabled suffers a subsequent industrial injury that is compensable through the workers' compensation system, and if the employee's resulting total permanent disability is greater than that caused solely by the subsequent injury, the employee is entitled to additional compensation, to be paid from the SIBTF, to compensate for that degree of additional permanent disability. Rather than incurring workers' compensation liability for the entirety of the worker's resulting total permanent disability, the employer is responsible only for the disability that results from the subsequent industrial injury and the SIBTF, supported by assessments on all employers, pays the additional compensation as necessary to compensate the worker for his or her total resulting permanent disability.

Chapter 34, Statutes of 2004, (SB 899) changed apportionment rules. Once the amended provisions of Labor Code sections 4663 and 4664 established that apportionment of permanent disability was to be based on causation of the disability. This means that the employer would only be liable for the percentage of permanent disability directly caused by the work injury and that workers were not entitled to compensation for aggravating a preexisting condition. As a result, applications for SIBTF benefits and SIBTF benefit payouts increased from \$8 million in 2003-2004, the last fiscal year before the 2004 reforms, to \$67.4 million in 2017-2018 (see Attachment II).

C. State Level Considerations

The condition of the SIBTF program has critical implications on the state's workers' compensation system and employers. The state's workers' compensation system is funded by employers to provide benefits to employees who sustain a work-related injury or illness. The SIBTF program is a component of the state's workers' compensation system, and increases to the cost of the SIBTF program impacts costs to the broader system. As a result, cost increases to the broader system increases employer contributions thereby impacting California businesses statewide.

D. Justification

Workload History

Workload Measure	2013	2014	2015	2016	2017
Beginning Case Load	6,284	6,796	7,417	8,461	9,832
New Cases	755	1,011	1,409	1,656	1,880
Cases Closed ¹	276	405	398	314	1,702
Ending Case Load ²	6,796	7,417	8,461	9,832	10,030
Annual Case Load Change	512	621	1,044	1,371	1,569

¹ In 2017-18, cases closed are high because a special examination was conducted (via overtime by a staff person in another unit) of all open cases in order to identify abandoned cases (i.e. applicant passed away prior to finalizing case against SIBTF).

² During the year, some cases are re-opened and/or re-closed. The ending case load accounts for these re-opened and/or re-closed cases.

Analysis of Problem

As displayed in the workload history on the previous page, SIBTF case inventory has risen steadily from 6,796 in calendar year 2013 to 10,030 in 2017.

The SIBTF unit currently has 15.0 authorized positions, including 9.0 Workers' Compensation Consultants (WCC). The WCCs are responsible for the calendaring, preparation, medical referral, investigation, liability analysis, and settlement negotiation of all SIBTF claims. The preparation of each case requires the claims examiner (WCC) to obtain the entire court file, review that file and determine the relevant medical and factual issues, arrange appropriate medical examination investigative services, analyze all investigative and medical reports and determine the extent of SIBTF liability. In addition, they investigate and calculate available statutory credits to the State and conduct settlement negotiations with applicant attorneys.

As of November 30, 2018, the WCCs had an average caseload of approximately 1,000 cases per examiner. This caseload is highly unmanageable for the workers' compensation systems. The resources requested by this proposal will reduce the caseload to approximately 360 per examiner.³

As reflected on Attachment II, the steady increase in caseloads in recent years has had significant effects on the overall cost of the program and workload. The examiners (WCC) are unable to adequately review files, provide defense analysis, and often in a rush to prepare their settlement work-ups to determine the value of a case. This is also affecting Office of the Director-Legal attorneys who have to attend multiple hearings at the Workers' Compensation Appeals Board (WCAB) on a daily basis. As a result of this inability to perform due diligence, the aggregate amount per claim has increased from approximately \$3,900 per claim at the end of 2013-14 to \$6,800 per claim by the end of 2017-18.⁴ Therefore, this proposal also requests commensurate legal staff to likewise balance the caseload of SIBTF attorneys and help ensure the due diligence and legal representation of all SIBTF cases. If this proposal is not approved the additional exponential increase in claims costs cannot be accurately estimated at this time.

This proposal assumes a reduction in caseload resulting in a reduced need for additional resources beginning in the 2022-23 fiscal year, (23.0 positions and \$3.4 million), and again in the 2023-24 fiscal year (14.0 positions and \$2.0 million). If actual caseload levels warrant adjustments to these assumptions, the department will seek approval for proposals in future fiscal years as appropriate.

Lastly, this proposal includes trailer bill language to align the SIBTF program with standards that govern the state's worker's compensation system. Existing law establishes a method to determine permanent disability based on guidelines provided by the American Medical Association. However, SIBTF statute provides an alternative method that does not align with existing standards. The trailer bill language provides technical adjustments to align SIBTF permanent disability determination to existing workers' compensation standards.

E. Outcomes and Accountability

Approval of this request would provide:

- Claims examiners with the ability to shift from a reactive to a proactive approach and be able to perform their due diligence in reviewing SIBTF cases;
- Accelerated resolution of cases, reducing the number of days from the opening of a case to its settlement;
- Reduced Declarations of Readiness filed for SIBTF cases, meaning there would be a higher frequency of cases settled before going to hearings at the WCAB;
- Increased capacity for claims examiners to put more effort into developing defenses for all cases

³ Based on "WCC Total Caseload" breakout above, excluding "maintenance" cases primarily handled by WCAs.

⁴ Based on overall expenses for each fiscal year, divided by the ending balance of claims. While there are multiple factors that can (and do) increase the aggregate cost of a claim, the state's inability to do its due diligence in this regard means that both it and the court must accept assertions as to injury and permanent disability which cannot be independently or objectively validated.

Analysis of Problem

- Increased potential for stipulated cases to be resolved with a disability rating **less than** 100%; and
- Enhanced customer service and faster response times to applicants, applicant attorneys, including but not limited to inquiries regarding the minimum disability rating required to qualify for benefits, medical and other service providers, and constituents.

F. Analysis of All Feasible Alternatives

1. Deny this Proposal

Pro: No increased positions or related operational costs

Con: Continued inability to manage the existing caseload; ambiguity and disharmony in the law, specifically as it relates to the need for legal medical evidence, as is the case for all non-SIBTF workers' compensation claims, resulting in higher than intended benefit payouts, which may continue to increase exponentially over time.

2. Approve Permanent Ongoing Resources at 30.0 positions and \$4.4 million

Pro: Provides capacity for a demand for service that may not diminish in the short term without the need for additional proposals; provides program stability and enhances the ability to recruit and retain staff; allows for sufficient time to recruit and train new staff so that the outcomes identified above can be achieved and maintained over time.

Con: Approval of this alternative would increase the ongoing cost of the proposal by 16.0 positions and \$2.4 million annually.

3. Approve Proposal as Requested

Pro: Addresses current resources needs as best understood; provides increased time for examiners to analyze their cases and do investigative work; provides capacity for both examiners and legal staff to do their due diligence to help ensure that the standard of legal medical evidence is met for all SIBTF cases; reduces resources over time to help ensure that over-staffing does not occur in the event of a reduced caseload over time.

Con: Requires additional proposals in the event that caseload does not effectively diminish by the end of the 2021-22 fiscal year.

G. Implementation Plan

The initial process for the program will be to locate/rent office space within the current location or a location nearby to accommodate the additional staff. Arrangement for the procurement of supplies, desks, chairs, computers, etc. will also be undertaken.

Once approved, the recruitment of available positions will be commenced. Hires and necessary training will be made as soon as possible.

H. Supplemental Information

Trailer Bill Language (Attachment I)

Subsequent Injuries Benefits Trust Fund Total Benefits Paid by Fiscal Year (Attachment II)

I. Recommendation

Approve this request for 30.0 positions and \$4.8 million in 2019-20, 30.0 positions and \$4.4 million in 2020-21 and 2021-22, 23.0 positions and \$3.4 million in 2022-23, with 14.0 positions and \$2.0 million ongoing from the Workers' Compensation Administration Revolving Fund. Additionally, approve Trailer Bill Language to align SIBTF statutes with existing workers' compensation statutes.

Attachment II

SUBSEQUENT INJURIES BENEFITS TRUST FUND TOTAL BENEFITS PAID BY FISCAL YEAR 2003-2004 to 2017-2018

<u>Fiscal Year</u>	<u>Amount</u>
2003 – 2004	\$ 7,969,000
2004 – 2005	\$10,152,000
2005 – 2006	\$13,271,000
2006 – 2007	\$13,231,000
2007 – 2008	\$16,012,000
2008 – 2009	\$17,573,000
2009 – 2010	\$18,634,000
2010 – 2011	\$20,930,000
2011 – 2012	\$23,878,000
2012 – 2013	\$26,363,000
2013 – 2014	\$26,761,000
2014 – 2015	\$31,892,000
2015 – 2016	\$36,487,000
2016 – 2017	\$45,483,000
2017 – 2018	\$67,366,000

